United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

14-2681 B Pls

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

vs.

RONALD RICH, APPELLANT

On Appeal from United States District Court
for the District of Vermont

BRIEF + APPENDIX FOR THE APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

The United States of America APPELLEE,	)	
v.	)	Docket No. 74-15
Ronald Rich, APPELLANT	)	

BRIEF FOR THE APPELLANT, RONALD RICH

Opinion Below

The district court wrote a Memorandum and Order on Defendant's Motion to Withdraw Plea of Guilty and Motion for Reduction of Sentence, which Memorandum and Order appears in the Appendix hereof.

Issue Presented

The trial court abused its discretion in denying Defendant's Motion to Withdraw Pleas of Guilty after sentence was imposed and upon presentation of clear and convincing evidence that Defendant had been erroneously advised by his trial defense counsel that at Defendant's option, he could withdraw his pleas of guilty to portions of the indictment at anytime including after sentence had been imposed.

Statement of Facts

The Appellant, Ronald Rich, was arrested on October 18, 1973, on a warrant issued by the Honorable Albert W. Coffrin, United States District Judge, District of Vermont, based on a complaint dated October 17, 1973. Appellant was indicted by federal grand jury on October 25, 1973, and was subsequently reindicted on additional charges involving similar federal narcotics violation charges on October 31, 1973. These indictments were subsequently consolidated and modified in a single ten (10) count indictment, including various counts of distribution of a controlled drug, to wit: methamphetamine etcetera, conspiracy with others and use of a communication facility (telephone) in connection with distribution of same, and a final count of habitual drug offender, which indictment was returned on January 24, 1974. (Appendix pp 1a - 8a). After some delay and after plea negotiations between government attorneys and defense counsels,

Defendant appeared before the Honorable James S. Holden, United States District Judge, District of Vermont, on May 9, 1974, and offered to change his pleas of not guilty to Counts 3, 6, 8, and 9 of the indictment to that of guilty and stating further that his offer to plead guilty to these counts was based on a negotiated plea understanding with government attorneys, who in return had agreed to dismiss the remaining counts of the indictment at a subsequent sentencing hearing. Counsel for both sides acknowledged that the plea negotiations did not include any agreement as to the sentence to be imposed by the Court, although defense counsels indicated they had represented to Defendant it was their "professional judgment" that the Court would impose concurrent sentences on each of the counts for a period not to exceed five (5) years. After warning Defendant that his defense counsels' advice as to the sentence to be imposed was solely within the Court's discretion and was not governed by his

counsels' representations, the Court accepted Defendant's pleas of guilty to the counts stated above and adjudged him guilty on each of the same. At no time during this hearing did the Court or counsel for either side specifically address the matter of the Defendant's "right" to withdraw his pleas of guilty.

Subsequently on September 12, 1974, with Judge Holden again presiding, the Court imposed a sentence of commitment to the custody of the Attorney General for a period of three (3) years followed by a consecutive sentence of five (5) years as to Counts 3, 6, and 9, including a Special Parole Term of four (4) years. The Defendant immediately protested this sentence through his counsel (Appendix p 25a), who moved to withdraw Defendant's pleas of guilty on all four counts, which motion was denied.

On September 27, 1974, trial defense counsel (Peter F. Langrock, Esq.) filed Defendant's Notice of Appeal to the United States Court of Appeals

for the Second Circuit as well as a Motion for Reduction of sentence. On the same date Edward A. John, Esquire, of Brattleboro, Vermont was appointed counsel informa pauperis for the Defendant who filed a motion for withdrawal of guilty pleas under Rule 32(d), Federal Rules of Criminal Procedure (Appendix pp11a-15a).

At the hearing on Defendant's Motion to Withdraw his pleas of guilty heard on October 21, 1974, the testimony of the Defendant and his chief trial defense counsel (Mr. Langrock) revealed the following facts and circumstances surrounding his change of pleas at the May 9, 1974 hearing:

A. That prior to entering his pleas Defendant had asked his counsel what sentence he might expect to which his defense counsel responded and ultimately "guaranteed" that any sentences imposed would be concurrently served and none would exceed five (5) years (See Argument Section herein, pp14 & 16).

B. That Defense counsel (Mr. Langrock) had advised Defendant that in the event the Court imposed consecutive sentences totalling in excess of five (5) years or impliedly any sentence he was dissatisfied with, he had a right to withdraw his pleas of guilty, at his option, at any time including after sentencing (See Argument Section herein, pp14 & 16).

C. That at least at one point during the Rule 11 hearing, Defendant inquired of his counsel whether or not he should disclose to the Court, defense counsel representation to him relative to his understanding of his "Right" to withdraw his plea of guilty, to which defense counsel responded in the negative. (See Argument Section herein, pp 14 & 16).

D. That based upon defense counsel's representations to Defendant concerning his "right" to withdraw from his pleas at anytime, Defendant relied fully upon same and accordingly, entered pleas of guilty to the above-stated Counts. (See Argument Section herein, pp 14&16 , and Appendix p 31a).

Despite this testimony, the Court denied Defendant's Motion and subsequently filed it's Memorandum and Orders (Appendix p 16a). This appeal followed.

Argument

Although as a general rule a Defendant is not permitted to withdraw a plea of guilty after sentence has been imposed, Rule 32(d) of the Federal Rules of Criminal Procedure provides that a Defendant may do so upon a showing that a "manifest injustice" would otherwise result. Evidence demonstrating that Defendant's plea of guilty was not made voluntarily with a full knowledge and understanding of the charges and the consequences of the plea constitutes a basis for finding a "manifest injustice" (Munich v United States (1964), 337 F2d 356; United States v. Lester 247 F2d 496; Berry v. United States, 412 F2d 189; Moorhead v. United States, 456 F2d 992; United States v. Myers 451 F2d 402). The

question of the voluntariness of a plea of guilty may be affected by misleading or erroneous advice of defense counsel to the extent of rendering the plea involuntary (Berry v. United States, Supra; Robert V. United States, 491 F2d 1236; United States v. Jasper, 481 F2d 982; Kelsey v. United States, 484 F2d 1198; Dougherty v. United States, 367 F. Supp 625). In cases where the Court or counsel misadvised Defendant as to the maximum possibility sentence in conjunction with the Court's inquiry under Rule 11, Federal Rules of Criminal Procedure, Courts have held that such misleading advice may vituate the voluntariness of a plea of guilty and thereby violate due process (Roberts v. United States, supra; Kelsey V. United States, supra; United States v. Myers, supra; Berry v. United States). Thus, in Roberts v. United States, supra, where the Court failed to inform Defendant that if a Special Parole Term were imposed as part of the sentence, additional restrictions would be placed

on his freedom following completion of a term of imprisonment, the Court held the plea involuntary on the grounds that the Defendant did not fully understand the consequences of his plea. The Third Circuit Court reached a similar conclusion in Kelsey v. United States, supra, where defense counsel erroneously advised Defendant that the maximum sentence to multiple pending charges could be pyramided into a sentence of seventy-five (75) years imprisonment, while, in fact, a lesser maximum period of imprisonment was applicable. The apparent rational of this decision was that the erroneous advice may have induced Defendant out of fear to enter his plea of guilty involuntarily.

Similarly, legal authority exists to the effect that a plea of guilty induced by counsel for the Defendant through misleading statement, false representations, or promises of the sentence to be imposed may constitute coercion and thereby render such a plea involuntary (United

States, v. Hawthorne 502 F2d 1183; Moorhead v. United States, supra; United States v. Simpson 436 F2d 162; United States v. Smith, 448 F2d 726). Conversely, however, where "assurances" of counsel for the Defendant as to his estimate of the sentence to be imposed are relied upon by Defendant in entering a plea of guilty, courts have generally held that such "assurances" constitute nothing more than counsel's "best professional judgment", and, if erroneous, not so misleading as to render the plea involuntary. (Masciola v. United States, 469 F2d 1057). On the other hand, assurances of counsel for the Defendant have been held to constitute more than "professional judgment" as in a case where defense counsel intimated to his client that a certain "proposition" had been offered (Moorehead v. United States, supra) or where an "arrangement" was being concluded (United States v. Hawthorne, supra) relative to the sentence to be imposed. The

Defendant in each of these cases erroneously interpreted these phrases to mean that his counsel had obtained a lighter sentence than that ultimately imposed. This is not to suggest in the case at bar that Appellant contends that his counsel below suggested that the Trial Court or counsel for the government had agreed to a more favorable sentence than that imposed, but rather Appellant submits that his counsel's reference to his "guarantee" or strong words to that effect, lulled him into a false sense of security which would not normally arise in a situation where Defendant regarded his attorney's advice as being his "best professional judgment".

The basis of Defendant's appeal herein is that the misleading and erroneous advice of his counsel to the effect that he could withdraw his plea at anytime caused him to enter a plea of guilty based on a false understanding of its consequences (See Rule 11, Federal Rules of Criminal Procedure). Evidence produced at a hearing on Defendant's

Motion to Withdraw his pleas of guilty (conducted on October 21, 1974) indicated his understanding as follows: (Transcript pp 4-6).

Q. (By Mr. John, Appointed Defense Counsel) Did their come a time when you had a change of heart sir?

A. (By Defendant) Yes.

Q. Can you tell the Court when that was?

A. Well, Mr. Langrock told me, he said if I plead guilty that I will get five years; all my charges will run concurrently, and that if I didn't get that, I had the right to change my plea.

Q. When did he tell you that?

A. Right there that morning (date of change of plea).

Q. During this two hour conference?

A. Yes.

Q. Was Mr. Davis (co-defense counsel) also present during that discussion?

A. Yes, he was.

Q. Is there any question in your mind these representations were made to you?

A. I don't understand.

Q. Are you sure this was said to you, specifically in those terms?

A. Yes.

Q. Would you have changed your plea had those representations not been made to you?

A. No, I wouldn't have.

Q. Is there any question in your mind about that?

A. No there isn't.

Q. Now before Judge Holden accepted your plea of guilty, he has a long procedure wherein he asks you many questions regarding the voluntary nature or the free decision on your part to enter your plea, and he, specifically, I believe, suggests to you, or asks you, rather, whether or not any threats or promises were made to you. Do you recall that?

A. Yes, I do.

Q. Did Judge Holden ask you all those questions?

A. Yes, he did.

Q. Did you answer those questions in the negative, no promises had been made to you?

A. Yes, I did.

Q. Why didn't you, at that time, tell Judge Holden of the representations made to you by the attorneys?

A. Well, I wanted to, but Mr. Langrock told me not to, he would back out.

Q. When did you want to tell Judge Holden?

A. After Judge Holden told me he didn't have to do what my lawyer guaranteed, or any promises from any lawyer, I leaned over and said, "why don't you just get up and tell him you told me I wouldn't get over five years", and Mr. Langrock said, Judge Holden is a fair man, and he will never give you over five years. If he does, you have a right to change your plea".

Q. Was it your understanding you had a right to change your plea even after sentence was imposed?

A. Yes, it was, Mr. Langrock guaranteed that I could. I said, Mr. Langrock, do you guarantee I can change my plea," and he said, "yes".

Q. If that guarantee had not been made to you by your attorney would you have changed your plea?

A. No I wouldn't.

This testimony at the same hearing was further substantiated by Mr. Langrock who testified as follows (Transcript p. 27):

Q. (By Mr. John) Now you were in court when Mr. Rich testified as to conversations held between you and he and Mr. Davis on the day of actual change of plea in May of 1974. Did you hear his testimony, Mr. Langrock, relative to those discussions?

A. Yes, I did.

Q. Did you, in fact, tell Mr. Rich that Judge Holden was a fair judge?

A. I did.

Q. Did you tell him in your professional judgment it was inconceivable, to you certainly, he would get more than 5 years sentence?

Mr. O'Neill. Yes, if he ---

Mr. John. Strike the question.

Q. (By Mr. John). Will, you tell the Court, Mr. Langrock, exactly what that conversation consisted of?

A. .....(after lengthy background discussion leading to change of plea)....I indicated to him what I would hope to do would be ---this is prior to doing so--- put on the record in open court that I made representations to him inthis regard that he would not receive more than five years, and that if the Court at that point was willing to take the plea with those

representations, that he was relying on my judgment in going forward, that the plea be taken and the presentence investigation be ordered. I indicated to him it was my understanding that a plea of guilty could be withdrawn if the circumstances arose which changed the material basis under which it was found. After long discussions and hard work on my part to convince him ---I am still convinced it was the correct thing to do--- he agreed to go along with that approach. He asked me, I think---I don't remember the exact words he said---"Can you guarantee me five years, no more than five years" and I first hedged. I said "I can't guarantee you five years, but I just don't believe there is a chance in the world it will happen otherwise", and he came back, "Can you guarantee it," and I said, "I can guarantee five years or an opportunity to withdraw your plea". (Transcript p. 32).

Mr. Langrock further confirmed his advice relative to his "guarantee" in later testimony to the

same question (Transcript pp 33-34):

A. .....Mr. Rich did ask at one point to put upon the record, at counsel's table, this 19-year question came up, with the full power of the Court, and I had explained to him before that there was no way I could limit the powers of the Court in any way; I could make representations on the record which the Court would appreciate, being as they are, and so then I think was the time the Court said, "You understand you could get more than 19 years", Mr. Rich said something, "shall I put on the record I will withdraw if I get more than five years?" I said, "That is not necessary, let me handle this matter. It was my feeling at this point you legally have a right to do so as a conclusion of law, not of fact."

Q. So he did, at that point, confer with you quickly at the counsel's table when Judge Holden was in the process of interrogating

him, and he did want to put on the record at that point his understanding of the right to withdraw?

A. I don't know what he wanted to do. All I know is Ronnie (Defendant) relied on me completely. I advised him as to certain matters and put it on the record, and I intended to inform the Court exactly what our position was; as far as the right to withdraw, that was a matter, I felt, of law following minimum standards. Not minimum standards, but the standards of criminal justice.

Trial defense counsel's advice in regard to Defendant's right to withdraw his plea, at his option, was obviously erroneous, as the case law holds that once a plea of guilty is entered the sound discretion of the Court controls whether or not it may be withdrawn (Williams v. United States, 192 F2d 39; United States ex rel Culbreath v. Rundle, 466 F2d 730; Rule 32(d), Fed. Rules of Criminal Procedure).

In the case at bar, Defendant submits that the erroneous advice of his counsel caused him to be substantially and materially mislead as to a fundamental consequence of his plea of guilty. The misunderstanding of the law by his attorney did not merely result in his disappointment over the imposition of a more severe sentence than expected, but rather caused him to be deprived of exercising his "right" to return to the status quo on a Not Guilty plea as his counsel had "guaranteed" him. In effect, Defendant had been advised, erroneously so, that he could enter a qualified plea of guilty in order to test the inclinations of the Court with respect to the sentence, and, if dissatisfied with the result he could withdraw at his option. Such advice directly effected a knowing and intelligent understanding of the consequences of a plea of guilty and thereby vitiates the voluntariness of Defendant's plea.

This case is distinguishable from those cases where federal courts have held that misleading

or erroneous advice or assurance of the sentence to be imposed (Mascioli v. United States, supra; Paradiso v. United States, 482 F2d 409; Crank v. United States, 438 F2d 635) as well as distinguishable from those cases where defense counsel failed to advise Defendant of his right of appeal (Boyes v. United States, 354 F2d 31; Dillane v. United States, 350 F2d 732); or where defense counsel misjudged the possibility of suppressing certain incriminating evidence crucial to the government's case (McMann v. Richardson, 397 U.S. 759, 25 L.Ed. 2d 763); or where defense counsel was unaware of two cases he believed would have caused him to advise Defendant differently with respect to his plea.

The Defendant further submits that as a result of two additional factors he was not truly given a full opportunity to voice his understanding of a "guaranteed" right to withdraw his plea. On the one hand, Defendant contends that his counsel

cajoled him and/or mislead him into not fully disclosing his erroneous understanding to the Court (compare Defendant's testimony with defense counsel's testimony hereinabove as well as Appendix pp 28a&31a). The federal courts have rejected this practice of counsel and granted Defendant some relief (Haynes v. United States, 348 F. Supp 1032). On the other hand, Defendant argues that he was not afforded a full and complete opportunity to disclose his understanding of withdrawal of a plea due partially to interjections of his counsel, as well as the failure of the Court to specially inquire further into his counsel's advice other than as to possible disposition on sentencing. The following inquiry demonstrates the foregoing assertion (from transcript of Change of Plea Hearing, May 9, 1974). (Transcript pp 24-25):

The Court: (Questions addressed to Defendant) Now, is there any further understanding that you entertain on

your part, is there anything more about these discussion that you have been led to believe might have been involved in this matter?

Mr. Langrock: If it please the Court, I think if I may interject at this point, I don't know of anything else that is on record except as I have indicated previously, I have given my client certain professional judgments which I believe he has considered in entering his plea at this time, but those are not promises or of the State in any way.

The Court: (Directed to Defendant) Well, you understand that whatever Mr. Langrock may have voiced by way of his professional judgment has no bearing on what the Court may ultimately do in making final disposition in your case?

Mr. Rich: Yes Your Honor.

The Court: That what Mr. Langrock views, or what Mr. Davis views as to what might be the ultimate outcome in no way binds the Court and has no control as far as the Court is concerned?

Mr. Rich: Well, I am pleading guilty through my lawyer's advice.

The Court: Yes

Mr. Rich: So, --

The Court: Yes, but there's been no further understanding on, --you don't understand there is anything further about what action will be taken in your case, other than what has been stated here in open court?

Mr. Rich: No.

In this colloquy, the Court limited its inquiry to solely the question of the Defendant's understanding of disposition, and cannot be fairly construed to have opened the larger question of the Defendant's further knowledge of the consequences of his guilty plea relative to his "right" to withdraw same.

The record of this proceeding, as well as other proceedings, is otherwise silent on this issue.

Lastly, Defendant submits that his immediate protestation to the sentence announced at the September 12, 1974 sentencing hearing further corroborates that a genuine misunderstanding of his "right" to withdraw his plea existed throughout that proceeding as well as all proceedings prior thereto (See Appendix p 25a). Case law indicates that the immediacy of a Defendant's protest is one of many factors to consider in resolving this question. (Von Moltke v. Gillies, 161 F2d 113, also 332 U.S. 708).

Conclusion

For the foregoing reasons, it is submitted that the judgment of conviction, the pleas of guilty, and the sentences imposed should be vacated and the case be remanded for the Defendant to plead anew to the indictment.

February, 1975

Respectfully,

TIMOTHY J. O'CONNOR, JR.
LEO F. BARILE, JR.
ATTORNEYS FOR APPELLANT

APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	§§812, 841, 846, 848,
	)	952, 960 and 963,
V.	)	Title 21, United
	)	States Code;
RONALD RICH	)	§2, Title 18, United States Code

COUNT I

The Grand Jury charges:

On or about the 3rd day of May, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute a quantity of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841 (a)(1), Title 21 and Section 2, Title 18, United States Code.

COUNT II

The Grand Jury further charges:

On or about the 3rd day of May, 1973, in the District of Vermont, RONALD RICH, the defendant,

unlawfully, willfully and knowingly did distribute and possess with intent to distribute a quantity of 3,4 - methylenedioxy amphetamine, a Schedule I controlled substance, in violation of Sections 812 and 841 (a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT III

The Grand Jury further charges:

On or about the 31st day of July, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 22.56 grams of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841 (a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT IV

The Grand Jury further charges:

On or about the 1st day of August, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did

distribute and possess with intent to distribute approximately 103.7 grams of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841 (a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT V

The Grand Jury further charges:

On or about the 11th day of October, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 58.0 grams of methamphetamine, a Schedule II controlled substance, in violation of Sections 812, 841(a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT VI

The Grand Jury further charges:

On or about the 16th day of October, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute

approximately 117.0 grams of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841(a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT VII

The Grand Jury further charges:

On or about the 18th day of October, 1973, in the District of Vermont, RONALD RICH, the defendant, unlawfully, willfully and knowingly did possess with intent to distribute approximately 15 grams of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841(a)(1), Title 21, and Section 2, Title 18, United States Code.

COUNT VIII

The Grand Jury further charges:

On or about the 22nd day of August, 1973, in the District of Vermont, RONALD RICH, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing

and intentional distribution and possession with intent to distribute by Thomas Bushey and Bruce Scofield of a quantity of methamphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, Section 841(a)(1); in violation of Sections 843(b), 841(a)(1), Title 21 and Section 2, Title 18, United States Code.

COUNT IX

The Grand Jury further charges:

From on or about May 1, 1971, up to and including October 18, 1973, in the District of Vermont and elsewhere, RONALD RICH, the defendant, unlawfully, willfully and knowingly did combine, conspite, confederate and agree with Thomas Bushey, Alan Bibeau, Richard Pye, Gary Rich, Steven Herberg, Kathryn Fraties Gibson, John Dalcourt, Linda Rich, Homer Ward and Bruce Scofield, named herein as co-conspirators, and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to

violate Sections 812 and 841(a)(1), and 952 and 960, Title 21, United States Code.

It was part of the conspiracy that RONALD RICH and the said co-conspirators would knowingly and intentionally distribute and possess with intent to distribute, and would import into the United States from places outside thereof large quantities of methamphetamine, a Schedule II controlled substance, in violation of Sections 812 and 841 (a)(1), 952, and 960, Title 21, United States Code.

As part of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the District of Vermont:

OVERT ACTS

1. On or about March 27, 1973, RONALD RICH had a conversation with Thomas Bushey.

2. On or about March 27, 1973, RONALD RICH had a conversation with Bruce Scofield.

3. On or about March 27, 1973, RONALD RICH gave money to Bruce Scofield.

4. On or about March 27, 1973, Bruce Scofield purchased checks in amount of $1500, $1700, and $3500, in St. Albans, Vermont.

5. On or about May 3, 1973, RONALD RICH had a conversation with William Yout in St. Albans, Vermont.

6. On or about May 11, 1973, RONALD RICH had a conversation with William Yout in St. Albans, Vermont.

7. On or about July 31, 1973, RONALD RICH had a conversation with Kathryn Fraties Gibson at a residence in St. Albans Bay, Vermont.

8. On or about August 22, 1973, RONALD RICH had a telephone conversation with Agostinho Fernandes.

9. On or about September 13, 1973, RONALD RICH had a conversation with Peter Vinton in the Third Rail Lounge.

10. On or about October 17, 1973, RONALD RICH was in the vicinity of Tut's, Inc., North Street, Burlington, Vermont.

(21 U.S.C. Sections 846 and 963)

COUNT X

The Grand Jury further charges:

From on or about May 1, 1971 and continuously thereafter up until October 18, 1973, in the District of Vermont and elsewhere, RONALD RICH, the defendant, unlawfully, willfully, knowingly and intentionally did engage in a continuing criminal enterprise, in that he unlawfully, willfully and knowingly did violate Sections 812, 841, 846, 952, 960 and 963 as alleged in Count I through IX of this indictment, which are incorporated by reference herein, which violations were a part of a continuing series of violations of said statute undertaken in concert with at least five other persons with respect to whom RONALD RICH, the defendant, occupied a position of organizer, supervisor, and manager and from which RONALD RICH, the defendant, obtained substantial income and resources; in violation of Section 848, Title 21, United States Code.

A TRUE BILL

/s/ Ann L. Barr
Foreman

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

UNITED STATES OF AMERICA	*	Criminal No. 74-15
	*	
V.	*	
	*	
RONAND RICH, Defendant	*	NOTICE OF APPEAL

Notice is hereby given that RONALD RICH, Defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order denying his request to withdraw his plea of guilty entered in this action on the 12th day of September A.D. 1974.

DATED at Middlebury, County of Addison and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY
Attorneys for Ronald Rich

By /s/Peter F. Langrock
Peter F. Langrock, Esq.
A member of the firm
Drawer 351
Middlebury, Vermont 05753

CERTIFICATE OF SERVICE

I, Peter F. Langrock, a member of the firm of Langrock and Sperry, certify that I have served the above Notice of Appeal on William Gray, Esq., Assistant U.S. Attorney, by mailing a copy to him.

DATED at Middlebury, County of Addison and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY

By/s/Peter F. Langrock
Peter F. Langrock, Esq.
A member of the firm

MOTION FOR REDUCTION OF SENTENCE

NOW COMES, the Defendant, RONALD RICH, by and through his attorney, Peter F. Langrock, and moves this Honorable Court pursuant to Rule 35 Federal Rules Criminal Procedure, to reduce the sentence imposed by the Court September 12, 1974.

Dated at Middlebury, County of Addison, and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY
Attorneys for Ronald Rich

By/s/Peter F. Langrock

CERTIFICATE OF SERVICE

I, Peter F. Langrock, a member of the firm of Langrock and Sperry, certify that I have served the above Motion for Reduction of Sentence on William Gray, Esq., Assistant U.S. Attorney, by mailing a copy to him.

Dated at Middlebury, County of Addison and State of Vermont this 20th day of September A.D. 1974.

LANGROCK AND SPERRY

By: /s/Peter F. Langrock
Peter F. Langrock
A member of the firm

MOTION TO WITHDRAW PLEA OF GUILTY

NOW COMES, Ronald Rich, by and through his Attorney, Edward A. John and moves this Honorable Court to permit said Defendant to withdraw his pleas of guilty to Counts 3, 6, 8 and 9 of a certain indictment in the above-captioned matter pursuant to the provisions of Rule 32(d) of the Federal Rules of Criminal Procedure for the following reasons:

1. That on May 9, 1974, the Defendant entered pleas of guilty to Counts 3, 6, 8 and 9 of the above-referenced indictment and in return the Government dismissed all remaining Counts alleged in said indictment.

2. That prior to entering said pleas of guilty, Defendant conferred with his counsel, Peter F. Langrock and Hanford Davis, who advised Defendant that in imposing sentence the Court would not impose a sentence totalling in excess of five years imprisonment and that the sentences imposed on each count would be served concurrently, and not consecutively.

3. That Defendant has consistently maintained his innocence to said charges and entered pleas of guilty and made statements as to his guilt, to the same solely upon the advice and instructions of his counsel, all of which has been and continues to be against his will.

4. That, at the advice of his counsel, Defendant executed a "Petition to Enter Plea and Order Entering Plea", pursuant to Rules 10 and 11, "Federal Rules of Criminal Procedure", without recording thereon his understanding of the limitations to be placed on the sentence to be imposed by the Court.

5. That the Defendant entered his pleas of guilty to said Counts solely upon the representations of his counsel's advice as to the limitations that would be placed upon the sentence of the Court at the time of sentencing.

6. That Defendant entered his pleas of guilty upon the further representation of counsel that he had a right to withdraw his pleas of guilty at any time and even after sentences were imposed, if said sentences exceeded a maximum of five years and if said sentences were made to run consecutively.

7. That on September 12, 1974, Defendant was adjudged guilty to said Counts 3, 6, 8 and 9 and

the Court imposed sentence as follows:

> Defendant is hereby sentenced on Count 8 of the Indictment to be committed to the custody of the Attorney General for a period of three years. Sentence on Counts 3, 6 and 9 are to follow and be consecutive to the sentence on Count 8. As to Counts 3, 6 and 9 Defendant is committed to the custody of the Attorney General for a period of five years with a special parole term of four years, all this to follow the sentence imposed on Count 8. Sentence on Counts 3, 6 and 9 to run concurrently with each other, for a total of eight years.

8. That Defendant immediately informed the Court that he had been mislead as to his understanding of the limitations to be placed on the sentence imposed and moved the Court to permit him to withdraw his pleas of guilty as aforesaid, which motion the Court denied.

9. That the misrepresentations and misleading advice given to Defendant by said counsel induced Defendant to enter said pleas to guilty involuntarily and without a full understanding of the consequences thereof.

10. That said misrepresentations by said counsel has caused the Defendant to be denied the effective assistance of counsel as guaranteed to him by the Sixth Amendment to the United States Constitution, all of which constitutes a manifest injustice to him.

Dated At Brattleboro, County of Windham and State of Vermont, this15th day of October, 1974.

RONALD RICH

By/s/ Edward A. John
Edward A. John
His Attorney

CERTIFICATE OF SERIVCE

I hereby certify that a copy of the within Motion to Withdraw Plea of Guilty has been sent this date to Honorable George W.F. Cook, United States Attorney by mailing via first-class mail, a conformed copy in a duly sealed envelope, postage prepaid, to him at his last known address, Federal Court House, Rutland, Vermont 05701.

/s/Edward A. John

ORDER EXTENDING TIME TO DOCKET
THE RECORD ON APPEAL

Upon consideration of pending matters in this Court, it is

ORDERED: That the time for filing and docketing the Record on Appeal is hereby extended to and including December 26, 1974.

Done in Court at Montpelier, in the District of Vermont, this 5th day of November, 1974.

/s/ James S. Holden
CHIEF, U. S. DISTRICT JUDGE

MEMORANDUM AND ORDER

On September 12, 1974, immediately after sentence was imposed, the defendant orally moved to withdraw his guilty plea. The court denied the oral motion from the bench. Thereafter, on September 26, 1974, the court at Rutland received a notice of appeal which was forwarded forthwith to the Clerk's office at Burlington.

On October 15, 1974, after other counsel had been assigned, the defendant filed a second and

written motion to withdraw the plea of guilty under Rule 32(d), Fed.R. Crim.P. The defendant also filed a motion to reduce the sentence under Rule 35.

A hearing was held before the court on the defendant's renewed motion on October 21, 1974 in Montpelier, Vermont. The Government requested leave, and was granted permission to file a written memorandum in opposition to the defendant's written and oral argument. The memorandum was submitted to the court on October 31, 1974.

No evidence was given at the hearing on October 21st of any threats or promises of leniency. Nothing was presented to undermine or impair the facts previously established and found at the time the guilty pleas were tendered and accepted on Counts III, VI, VIII and IX of the indictment. The court reaffirms that the defendant's pleas of guilty to these counts were entirely voluntary, made with full understanding of the nature of the

charges presented in the indictment and that consecutive sentences might be imposed to the extent of nineteen years of confinement. The court further reaffirms its prior findings that the defendant's guilt was well founded on facts made known to the defendant and the court and that the defendant was fully advised by competent and experienced attorneys who were independently selected and retained by the defendant.

The evidence presented at the hearing on October 21, 1974 developed but one point that was previously withheld at the time the court accepted the defendant's pleas of guilty. The defendant now contends that his attorney advised him that in the event the court should impose consecutive sentences, he would be allowed to withdraw the pleas of guilty.

The defendant made known to the court that he was pleading guilty on his lawyer's advice. This included counsel's prediction, based on "professional judgment" that the court would not impose

consecutive sentences, but that "he (the defendant) runs a very substantial risk of receiving the maximum penalty, which (counsel) understood to be five (5) years on three (3) counts, fifteen thousand dollars ($15,000) fine and four (4) years or thirty thousand ($30,000) on another count." Counsel further made known to court, and advised the defendant " - that the Government is claiming a procedure under 21 U.S.C. § 849, so that I have, I think my client is aware that if this is applicable in this particular case, it carries a sentence of up to a maximum of twenty-five (25) years."

If the defendant was advised that he could withdraw his pleas of guilty to the several counts, if disappointed by the sentence imposed, this fact was withheld from the court. The Court specifically asked the defendant"

"Yes, but there's been no further understandings on, - you don't understand there

is anything further about what action will be taken in your case, other than what has been stated here in open court?

Mr. Rich: No."

The defendant has failed to establish that the withdrawal of his pleas is essential to correct a manifest injustice within the meaning of this requirement of Rule 32(d). To the contrary, the granting of the motion would prejudice the interest of the Government and impair the solemn undertaking of those accused of crime to stand by the consequence of a voluntary, intelligent and well informed confession of guilt and consent to judgment of conviction.

All facts in the record bearing on the question raised by the motion having been considered, the motion is denied. Brady v. United States, 397 U.S. 742, 748 (1969); United States v. Lombardozzi, 436 F.2d 878, 880-881 (2d Cir.), cert. den. 402 U.S. 908 (1971); Edwards v. United States, 256 F2d 707, 710 (D.C. Cir. 1958).

It is so ORDERED. It is further ORDERED that the defendant's motion for reduction of sentence is denied.

Dated at Montpelier, in the District of Vermont, this 8th day of November, 1974.

/s/ James S. Holden
James S. Holden
Chief Judge

MOTION FOR RE-HEARING

Now comes Ronald Rich, defendant in the above captioned case, and moves this Court grant him a new hearing on his motion to withdraw his plea and as grounds therefore shows:

1. That when a judge accepts a guilty plea without making inquiry as to voluntariness required by Rule 11, F.R.C.P., he is thereafter disqualified from conducting evidentary hearing on voluntariness. Halliday vs. United States, 380 F. 2nd, 270, 3 CLB 494.

2. The same rule of law is mandated when moving to vacate under 28 U.S.C. Section 2255.

Dated at Windsor, Vermont, this 13 day of November 1974.

/s/ Ronald M. Rich
Ronald Rich

ORDER

Upon consideration of the record and the written arguments filed by the Defendant and the Government, it is ORDERED:

The Defendant's motion to reduce the sentence, motion for attendance of witnesses on reduction of sentence and motion for re-hearing of the Defendant's motion to withdraw the plea of guilty, are denied.

Done in Court at Rutland, in the District of Vermont, this 20th day of December, 1974.

/s/ James S. Holden
CHIEF JUDGE

ORDER RE DOCKETING OF RECORD ON APPEAL

The court noting that Edward John, Esq. is counsel of record for appellant Ronald Rich and

being advised as to the progress of the appeal and that notice of appeal was filed on September 27, 1974.

IT IS HEREBY ORDERED that a copy of the transcript of testimony shall be filed with the Clerk of the District Court on or before December 27, 1974.

IT IS FURTHER ORDERED that the record be docketed on or before December 27, 1974.

IT IS FURTHER ORDERED that if the record is not docketed by the time directed, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that the appellant may, without further order of the court, remove the record for purposes of preparation of the appellant's brief and appendix, provided that the record is returned to the custody of the court on or before the date set for filing the appellant's brief.

IT IS FURTHER ORDERED that the brief and appendix of appellant be filed on or before January 27, 1975.

IT IS FURTHER ORDERED that if appellant's brief or appendix is not filed by the time directed, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that the United States file its brief on or before February 27, 1975.

IT IS FURTHER ORDERED that the argument of the appeal be ready to be heard during the week of March 3, 1975.

Dated: November 22, 1974

A. Daniel Fusaro,
Clerk

ORDER RE DOCKETING OF RECORD
ON APPEAL

A motion having been made by Leo F. Barile, Jr. counsel for appellant Ronald Rich, for an extension of time to file a brief and appendix, the order of the court, dated November 22, 1974, is amended as follows:

IT IS HEREBY ORDERED that 7 copies of brief and appendix of appellant be filed on or before February 26, 1975 and shall be in xerographic form.

IT IS FURTHER ORDERED that if appellant's brief or appendix is not filed by the time directed, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that the United States file its brief on or before March 28, 1975.

IT IS FURTHER ORDERED that the argument of the appeal be heard during the week of April 7, 1975.

A. Daniel Fusaro
Clerk

Dated January 28, 1975

EXCERPTS FROM TRANSCRIPTS

Sentencing Hearing - September 12, 1974

The Court: .....Taking all of these conflicting threads into consideration, THE SENTENCE OF THE COURT ON COUNT 8 OF THE INDICTMENT, to which you have pleaded guilty, that is that relates to the telephone communication, YOU ARE COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL FOR A PERIOD OF THREE (3) YEARS.

THE SENTENCE ON COUNTS 3, 6, and 9, ARE TO FOLLOW AND TO BE CONSECUTIVE TO THE SENTENCE IMPOSED ON COUNT 8.

Thus, as to Counts 3, 6 and 9, YOU WILL BE COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL FOR A PERIOD OF FIVE (5) YEARS, WITH A SPECIAL PAROLE TERM OF FOUR (4) YEARS, ALL of this to follow the sentence imposed on Count 8.

THE SENTENCES ON COUNTS 3, 6 and 9 SHALL RUN CONCURRENTLY, BUT CONSECUTIVE TO THE SENTENCE IMPOSED ON COUNT 8. So that a total of EIGHT (8) YEARS IS THE SENTENCE OF THIS COURT, WITH A SPECIAL PAROLE TERM ON COUNTS 3, 6 and 9 OF FOUR (4) YEARS.

In imposing this sentence, the Court has hope that your - that you will turn around and those counts that you may have had that heretofor have been used wrongfully and illicitly will be turned to some good.

Whether you do this or not, will depend on your life in the place of confinement which will

be designated and I think there is enough to be salvaged so that this can be done.

MR. LANGROCK: If it Please the Court, if I might have five minutes, my client has communicated certain matters he wants to discuss with me at this time and then come back before this Court. I would ask for a recess of five minutes.

THE COURT: Very well.

(Recessed from 10:07 a.m. until 10:20 a.m.)

MR. LANGROCK: My client has asked me to ask the Court at this point, to request permission to withdraw his "guilty" plea, on the four counts. I have talked to my client, I have given him advice in this regard. He is not regarding my advice on this particular point on the circumstances. I think that there is some merit in his right to do so. I think I am in a difficult position to represent him at this point. I would suggest that perhaps other counsel be appointed to represent him forthwith in this matter. I

expect that perhaps that I would have to be a witness in any proceeding in this matter. There is evidentiary basis, I think for his position.

THE COURT: Well, if there is a request to withdraw a plea of "guilty" at this time, the request is denied. Of course, under the Rules of Criminal Procedure, the Defendant may make any appropriate Motion, and of course, if he seeks other counsel, of course, that is his option.

Hearing on Motion to Withdraw Plea - October 21, 1974

Q. (By Mr. John) I think you said Mr. Langrock told you at that time if you did not enter a plea of guilty he would withdraw from the same, is that right?

A. (By Defendant). Yes.

Q. So if you wanted a trial, you would have to go to another attorney, is that what you are saying?

A. Yes.

Q. He indicated to you that if you wanted to try this case, he would get out, is that right?

A. Mr. Davis and Mr. Langrock did.

Q. Both stated to you that if you wished to do anything other than plead guilty, they would withdraw from the case, is that right?

A. Yes.

Q. (By Mr. O'Neill) Let's change the subject. First of all, did there ever come a point in time when Mr. Rich indicated to you that he didn't wish to plead guilty, or wished to withdraw a plea of guilty, and you indicated to him that if he didn't plead guilty, you and Mr. Davis would both withdraw from the case.

A. Mr. Langrock: I told him at the time, that morning we discussed, and it is very hard to take any particular moment out of context. I don't mean just the two hour

discussion. I mean 9 years of dealing with Ronnie, and I am sure I indicated to him, "Ronnie, if you can't trust my judgment in this case, you really don't want me as your lawyer. It is very difficult for me to go in here and spend two weeks of time and see you go down the drain on something I think should be disposed of in this fashion".

Q. Specifically, did you ever tell Ronald Rich if he did not follow your judgment you would refuse to work with him any further.

A. Words to that effect. I don't remember the whole conversation, but I made it clear to him if he didn't follow my advice here, I sure as hell didn't want to go to trial for him. There is no question I made that position clear to him. I can't remember the exact words, but it has to be taken in full context.

Q. (By Mr. O'Neill) Would you characterize the relationship existing between yourself and the defendant as being beyond that that normally attaches between attorney and client?

A. That is a characterization I don't want to put, but there is no question for 9 or 10 years Ronnie has been a product, I think, a victim of our society, and I have tried to work with him and represent him and tried to pull him through some tough matters, and there is no question he relied very heavily on my judgment.

Q. Have you ever represented him in the state courts where there has been some plea bargaining and the state failed to carry through on any promises made in the process of that bargaining?

A. I can say, without going into the particulars of it, that I have represented him several times in the state courts--some times on pleas of not guilty and we have gone to trial, and other times on pleas of guilty--all of them in minor matters--but any plea of guilty, Ronnie knew I would today say exactly what was going to transpire before we went to court with a firm plea bargain; in effect, there may be some cases it could not exceed such and such, but there was certainly a plea subsequent to a negotiation of some sort.

Q. But whatever had been promised was delivered in your experience with him in the past?

A. That has been universally my case. I have not had anything other than that.

Q. (By Mr. O'Neill) What you were stating to Mr. Rich was your thought, or opinion, or whatever type of preparatory language you wish to use to indicate that was your belief as to the sentence the Court would impose, is that correct?

A. Mr. Langrock: No. Ever since the Atwood case and other matters, the pleas of guilty can be entered under certain condition. You can enter a plea of guilty even if you aren't guilty because you are worried about the sentence, and I told Mr. Rich I thought this was a difficulty between the United States Attorney's office and myself, and the Department of Drug Enforcement, and I thought the ultimate way of handling this matter was to put what, from my experience, was the maximum disposition and state it plainly

on the record. It was my judgment this would be the maximum disposition, and that he, in fact, was relying on my judgment in this regard, and entered a plea of guilty, and I thought that would dispose of the case provided that the Court agreed with my evaluation of the facts. If the Court did not agree with my evaluation of the facts, I assumed the position would be given that the Court would not do so and my client would have the opportunity to go back on the status quo.

Q. You said you assumed this would be the case. You never represented to the Court, on or off the record, or any time, that if the Court did not agree with your professional judgment, it should allow Mr. Rich an opportunity to withdraw his plea of guilty, did you?

A. I never specifically said that we are entering this plea conditioned upon the

fact that we reserve our right to withdraw it if the Court doesn't agree. I think it was implicit is what I intended to say, and said to the Court this is what I did advise Mr. Rich. I may have made an incorrect legal conclusion, but that was my understanding of the law, and it was the fact I communicated to Mr. Rich.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE	)	
VS	)	Docket No. 74-[redacted]2681
RONALD M. RICH, APPELLANT	)	

CERTIFICATE OF SERVICE

I do hereby certify that on the 25th day of February, 1975, I made service of the Brief for the Appellant and Appendix for the Appellant upon the United States of America, appellee, by mailing two copies of the same to George W.F. Cook, United States Attorney for the District of Vermont, P.O. Box 10, Rutland, Vermont, 05701.

Leo F Bavile Jr
Attorney for Appellant